

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA:

Plaintiff,

v.

CASE NO.: K102888

LEE BOYD MALVO,  
A/K/A JOHN MALVO,

Defendant.

NOTICE

PLEASE TAKE NOTICE that on March 3, 2003, at 10:00 a.m. or as soon thereafter as counsel may be heard, the County of Fairfax, Virginia, will move the Honorable Jane Marum Roush to permit a limited point-to-point telecast (closed circuit) of the trial proceedings in this matter for the reasons stated in the accompanying Motion and Memorandum of Points and Authorities.

Respectfully submitted,

County of Fairfax, Virginia

By: \_\_\_\_\_  
Counsel

**DAVID P. BOBZIEN  
COUNTY ATTORNEY**

By: Robert M. Ross (VSB No. 21304)  
Assistant County Attorney  
Karen L. Gibbons (VSB No. 28859)  
Assistant County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064  
Tel: (703) 324-2421  
Fax: (703) 324-2665  
Counsel for County of Fairfax, Virginia

**CERTIFICATE OF SERVICE**

I hereby certify that I sent by facsimile and first-class mail, postage pre-paid, a true and accurate copy of the foregoing to: Michael S. Arif, Esquire, Mark J. Petrovich, Esquire, Thomas B. Walsh, Esquire, Martin, Arif, Petrovich & Walsh, 8001 Braddock Road, Springfield, Virginia 22151, counsel for the defendant, and by hand-delivery to Robert F. Horan, Jr. Commonwealth's Attorney, 4110 Chain Bridge Road, Fairfax, Virginia 22030, on the 14th day of February 2003.

Counsel

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CASE NO.: K102888

LEE BOYD MALVO,  
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Defendant.

COUNTY OF FAIRFAX, VIRGINIA'S MOTION  
TO PERMIT LIMITED POINT-TO-POINT  
TELECAST OF TRIAL PROCEEDINGS

Pursuant to Va. Code Ann. § 19.2-266 (Michie 2000), the County of Fairfax, Virginia ("County"), respectfully moves for leave to telecast limited point-to-point coverage of the trial in this matter, and as grounds for this motion, the County, states as follows:

1. The County is the political subdivision of the Commonwealth of Virginia in which jurisdiction for this matter is grounded by virtue of the events set forth in the indictment having occurred within the geographical confines of the County.
2. The October 2002 shootings in Virginia, Maryland, and the District of Columbia, influenced the lives of virtually every citizen in this area and throughout our nation.
3. Due to the limited seating space in the courtroom, the County is proposing to telecast limited point-to-point coverage of the trial in this matter.
4. The courtroom proceedings would be telecast point-to-point only, meaning that they would go straight from the broadcast camera to television monitors located in one separate viewing room. No audio or visual recordings would be made of the proceedings.

5. No cameras would be present in the courtroom. The camera would be located in a separate, but adjacent room at the back of the courtroom, and would allow for viewing of the courtroom through the small window-type opening. The window can be covered if the Judge wants to exclude certain actions or events from being telecast. Courtroom staff and the Sheriff's deputies could locate microphones at strategic points in the courtroom to receive audio from key sources.

6. The proceedings would be telecast to the ground level meeting room (former Fairfax County Board of Supervisors' meeting room) at the Massey Building. Telecasting the proceedings in this manner would serve the needs and interests of at least four distinct groups: victims and families, members of the Sniper Task Force, the media, and the public, thereby allowing them to observe the criminal justice process first-hand if they are unable to obtain a seat in the courtroom.

7. The County previously provided point-to-point telecasting of the *Kasi* trial in 1997. The cabling system installed in the courthouse and the Massey Building during the *Kasi* trial is still in place. If needed, additional networking by the County's Department of Cable Communications could be accomplished well before the trial date with minimal disruption. Specific locations for the receiving television monitors could be designed, tested, and approved by the Court well in advance of trial.

8. The specific guidelines and limitations provided in Va. Code Ann. § 19.2-266 would be achieved by a limited point-to-point telecast while posing little, if any, potential prejudice to the parties.

9. Limited point-to-point coverage of the trial would allow for greater and more organized access for the media while maintaining the security, dignity, and order of the courtroom.

10. Limited point-to-point coverage of the trial would allow victims and/or their families, members of the Sniper Task Force, and members of the public who are not able to obtain a seat in the courtroom to be able to view the proceedings.

11. Robert F. Horan, Jr., Commonwealth's Attorney, has no objection to a limited point-to-point telecast to one location in the Massey Building. Michael S. Arif, Esquire, counsel for the defendant, objects to a limited point-to-point telecast.

WHEREFORE, for the foregoing reasons and those contained in the accompanying memorandum of points and authorities, the County's motion should be granted.

**Respectfully submitted,**

County of Fairfax, Virginia

By: Counsel

**DAVID P. BOBZIEN**  
**COUNTY ATTORNEY**

By: Robert M. Ross (VSB No. 21304)  
Assistant County Attorney  
Karen L. Gibbons (VSB No. 28859)  
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Counsel

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA

vs.

LEE BOYD MALVO  
aka JOHN MALVO

Criminal No. K102888

**MEMORANDUM OF POINTS AND AUTHORITIES**  
**IN SUPPORT OF THE COUNTY OF FAIRFAX, VIRGINIA'S**  
**MOTION TO PERMIT LIMITED POINT-TO-POINT TELECAST**  
**OF TRIAL PROCEEDINGS**

The County of Fairfax, Virginia ("County"), seeks this Court's permission to provide a limited point-to-point telecast (closed circuit) of the trial proceedings in this case pursuant to Va. Code Ann. §19.2-266 (Michie 2000) and in support of its motion submits this memorandum of points and authorities.

**Background**

The "sniper shootings" in October 2002 resulted in the deaths and serious bodily injuries of individuals throughout Virginia, Maryland, and the District of Columbia. Rarely, have events more profoundly affected the lives of the residents of these jurisdictions than the uncertainty and fear which surrounded these shootings. Persons throughout the nation became witnesses to horrific shootings and the massive efforts of the law-enforcement community to stop the killings and capture those responsible. The arrest and prosecution of Lee Boyd Malvo is a continuation of the public process involving the criminal justice system.

In consideration of the fact that this process is indeed a public one, the County is seeking a method of providing those persons who are unable to obtain a seat in the courtroom, including

victims and/or their families, members of the Sniper Task Force, and the media, with the ability to view the criminal justice process first-hand.

The County believes that this can be best accomplished through a limited point-to-point telecast of the trial proceedings. The limited point-to-point telecast would be from a camera located in the room at the rear of and adjacent to the trial courtroom to the ground level meeting room (former Fairfax County Board of Supervisors' meeting room) at the Massey Building (Public Safety Building). Security at the ground level meeting room will be provided by the Sheriff's Department. No audio or visual records would be made of the proceedings. The County previously provided point-to-point telecasting of the *Kasi* trial in 1997. The cabling system installed between the courthouse and the Massey Building during the *Kasi* trial is still in place.

#### **Legal Standing**

The Virginia Code provides for the broadcasting of trial proceedings in all criminal cases. Specifically, Va. Code § 19.2-266 sets forth that:

In the trial of all criminal cases, whether the same be felony or misdemeanor cases, the court may, in its discretion, exclude from the trial any persons whose presence would impair the conduct of a fair trial, provided that the right of the accused to a public trial shall not be violated.

A court may solely in its discretion permit the taking of photographs in the courtroom during the progress of judicial proceedings and the broadcasting of judicial proceedings by radio or television and the use of electronic or photographic means for the perpetuation of the record or parts thereof in criminal and civil cases, but only in accordance with the rules set forth hereunder.

Further, Va. Code Ann. § 19.2-266 sets forth specific guidelines designed to insure minimal disruption to the courtroom proceedings while permitting public access by means of media coverage.



The trial judge is given considerable discretion in the enforcement of the statutory scheme and is limited only in that "the trial judge must not act arbitrarily nor violate or abridge guaranteed constitutional rights." *Richmond Newspapers, Inc. v. Commonwealth*, 222 Va. 574, 281 S.E.2d. 915, 924 (1981).

**Argument**

The public's interest in the trial proceedings in this case are substantial and that interest must, of necessity, be balanced against the defendant's right to a fair trial. The allowance of a limited point-to-point telecast of the trial in this case serves both interests. It meets the statutory requirements in that it is minimally invasive, with no actual camera in the courtroom, it presents no distracting lights or sounds, and it retains an orderly and normal courtroom environment. It is broadcast to a limited audience with no audio or video recording permitted. Permitting limited point-to-point telecast of the trial proceedings in this case will allow those persons who are not able to obtain a seat in the courtroom to still be able to observe the criminal justice process firsthand.

Wherefore, the County of Fairfax, Virginia respectfully requests that the Court grant its motion to allow limited point-to-point telecast of the trial proceedings in this case.

**Respectfully submitted,**

County of Fairfax, Virginia

By: \_\_\_\_\_

Counsel

**DAVID P. BOBZIEN  
COUNTY ATTORNEY**

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Counsel

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